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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-79528; File Nos. SR-DTC-2016-007; SR-FICC-2016-005; SR-NSCC-2016-003)

December 12, 2016

Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1, Relating to Clearing Agency Investment Policy

On August 25, 2016, The Depository Trust Company (“DTC”), Fixed Income Clearing Corporation (“FICC”), and National Securities Clearing Corporation (“NSCC,” and together with DTC and FICC, the “Clearing Agencies”) filed with the Securities and Exchange Commission (“Commission”) proposed rule changes SR-DTC-2016-007, SR-FICC-2016-005, and SR-NSCC-2016-003 (“Proposed Rule Changes”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to adopt the Clearing Agency Investment Policy, which governs the investment of funds of the Clearing Agencies.

The Proposed Rule Changes were published for comment in the Federal Register on September 13, 2016.<sup>3</sup> The Commission did not receive any comments on the Proposed Rule Changes. Pursuant to Section 19(b)(2) of the Act,<sup>4</sup> on October 26, 2016, the Commission designated a longer period within which to approve the Proposed Rule

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 78778 (September 7, 2016), 81 FR 62963 (September 13, 2016) (SR-DTC-2016-007; SR-FICC-2016-005; SR-NSCC-2016-003).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

Changes, disapprove the Proposed Rule Changes, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Changes.<sup>5</sup> On December 7, 2016, DTC, FICC, and NSCC each filed Amendment No. 1 to their respective Proposed Rule Changes (“Amendments No. 1”), as discussed below. The Commission is publishing this notice to solicit comments on Amendments No. 1 from interested persons and is approving on an accelerated basis the Proposed Rule Changes, as modified by Amendments No. 1.<sup>6</sup>

I. Description of the Proposed Rule Changes and Notice of Filing of Amendments No. 1

As described by the Clearing Agencies, the Proposed Rule Changes, as modified by Amendments No. 1, would adopt the Clearing Agency Investment Policy, which would govern the management, custody, and investment of cash deposited to the respective NSCC and FICC Clearing Funds and the DTC Participants Fund,<sup>7</sup> the proprietary liquid net assets (cash and cash equivalents) of the Clearing Agencies, and

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<sup>5</sup> See Securities Exchange Act Release No. 79165 (October 26, 2016), 81 FR 75865 (November 1, 2016). The Commission designated December 12, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Changes.

<sup>6</sup> Capitalized terms not defined herein are defined in the NSCC’s Rules & Procedures (“NSCC Rules”), DTC’s Rules, By-laws and Organizational Certificate (“DTC Rules”), FICC’s Mortgage-Backed Securities Division Clearing Rules (“MBSD Rules”), or FICC’s Government Securities Division Rulebook (“GSD Rules”), as applicable, available at <http://dtcc.com/legal/rules-and-procedures>.

<sup>7</sup> The NSCC and FICC Clearing Funds, and the DTC Participants Fund are described further in the rules of each of the Clearing Agencies. See Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules. Supra, note 6.

other funds held by the Clearing Agencies pursuant to their respective rules. Investment of these funds was previously governed by the investment policy of The Depository Trust & Clearing Corporation (“DTCC”), which is the parent company of the Clearing Agencies.

The Clearing Agency Investment Policy would include, generally, a glossary of key terms, the roles and responsibilities of DTCC staff in administering the Clearing Agency Investment Policy, guiding principles for investments, sources of investable funds, allowable investments of those funds, limitations on such investments, authority required for those investments, and authority required to exceed established investment limits.

The Clearing Agency Investment Policy would be co-owned by DTCC’s Treasury group (“Treasury”)<sup>8</sup> and the Counterparty Credit Risk team (“CCR”) within DTCC’s Financial Risk Management group.<sup>9</sup> Additionally, the Clearing Agency Investment Policy would be reviewed annually and material changes would be required to be approved by the Board of Directors of each of NSCC, DTC, and FICC (“Boards”), or such other committee to which such authority may be delegated by the Boards from time to time. Future changes to the Clearing Agency Investment Policy would be subject to a subsequent rule filing and approval by the Commission.

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<sup>8</sup> Treasury is a part of the DTCC Finance Department and is responsible for the safeguarding, investment, and disbursement of funds on behalf of the Clearing Agencies and in accordance with the principles outlined in the Clearing Agency Investment Policy.

<sup>9</sup> Among other responsibilities, DTCC’s Financial Risk Management group (formerly known as DTCC’s Enterprise Risk Management group) is generally responsible for the systems and processes designed to identify and manage credit, market, and liquidity risks to the Clearing Agencies.

Treasury would be responsible for identifying potential counterparties to investment transactions, establishing and managing investment relationships with approved investment counterparties, and making and monitoring all investment transactions with respect to the Clearing Agencies. Additionally, Treasury would be responsible for managing, monitoring, and internal reporting of investment capacity utilization relative to established aggregate investment limits.<sup>10</sup> Requests to exceed counterparty limits would be capped at a certain percent of the respective limits, as set forth in the Clearing Agency Investment Policy.

CCR would be responsible for conducting a credit review of any potential counterparty, updating those reviews on a quarterly basis, and establishing the investment limit for each counterparty approved by CCR. In conducting a credit review, CCR would evaluate the creditworthiness of counterparties based on a number of factors, including the credit ratings provided by external credit rating agencies. Counterparties generally would be required to meet a minimum external credit rating set forth in the Clearing Agency Investment Policy; however, CCR would be permitted to grant an exception to the minimum external credit rating requirement for a particular counterparty where CCR concludes that approving exposures to that counterparty would serve a valid business or investment purpose of the Clearing Agencies and the risk of loss or default to the Clearing Agencies is assessed as minimal. CCR could grant such an exception based on an assessment of the counterparty's capitalization levels, liquidity resources, earnings trends, and any other relevant information. The exception would be approved by a

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<sup>10</sup> All investments are subject to limits set by type of allowable investment and by counterparty. Investment limits are set at an aggregate DTCC-wide level and would apply to investments made by any of DTCC and each of its subsidiaries, including each of the Clearing Agencies.

Managing Director in DTCC's Financial Risk Management group in accordance with the Clearing Agency Investment Policy.

Funds invested pursuant to the Clearing Agency Investment Policy would include (i) cash deposits to the respective NSCC and FICC Clearing Funds and the DTC Participants Fund, (ii) general corporate funds of each of the Clearing Agencies, (iii) NSCC's prefunded default liquidity funds raised from the private placement of unsecured debt,<sup>11</sup> (iv) amounts deposited with NSCC by its participants to meet Rule 15c3-3, promulgated under the Act as part of its fully-paid-for service,<sup>12</sup> (v) corporate action payments or principal and interest payments on Securities credited to the Accounts of DTC Participants that are received by DTC too late in the day or missing information needed for same-day allocation,<sup>13</sup> (vi) funds collected from DTC Participants through net funds settlement and held by DTC to cover 130 percent of the market value of "short positions,"<sup>14</sup> and (vii) cash debited from Netting Members of FICC's Government Securities Division to satisfy such members' mark-to-market deficits on forward settling transactions.<sup>15</sup>

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<sup>11</sup> See Securities Exchange Act Release No. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (SR-NSCC-2015-802).

<sup>12</sup> 17 CFR 240.15c3-3; see supra, note 6.

<sup>13</sup> See supra, note 6.

<sup>14</sup> In this context, "short positions" refer to Securities that have been deposited by, and credited to the Account of, a DTC Participant, pending re-registration into the name of Cede & Co., the DTC nominee, which are nevertheless permitted to be delivered to another DTC Participant; this 130 percent charge is held by DTC until the Securities are re-registered. See supra, note 6.

<sup>15</sup> See supra, note 6.

The Clearing Agency Investment Policy would set forth guiding principles for the investment of funds, which include adherence to a conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk. The guiding principles would also mandate the segregation and separation of deposits to the respective NSCC and FICC Clearing Funds and the DTC Participants Fund, so that such amounts are not commingled with each other or with other funds held by the Clearing Agencies. The guiding principles would also address the process for evaluating the credit ratings of counterparties and setting investment limits, which would be evaluated, reviewed, and approved quarterly by CCR. Finally, the guiding principles would make clear that risk of investment loss is addressed by the rules of each of the Clearing Agencies.

The Clearing Agency Investment Policy would identify permitted investments and the parameters of, and limitations on, each type of investment. In general, assets would be required to be held by regulated and creditworthy financial institution counterparties and invested in specified types of financial instruments. Permitted financial investments may include, for example, deposits with banks, including the Federal Reserve Bank of New York, collateralized reverse-repurchase agreements, direct obligations of the U.S. government, money-market mutual funds, and high-grade corporate debt.<sup>16</sup> Additionally, the Clearing Agencies would, pursuant to the Clearing Agency Investment Policy, be permitted to use general corporate funds, and only such funds, to enter into hedge transactions to manage certain corporate exposures, such as interest rate or foreign currency risk; hedge transactions would not be permitted to be engaged in for speculative purposes.

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<sup>16</sup> Only general corporate funds of a Clearing Agency would be permitted to be invested in high-grade corporate debt.

Investments in collateralized reverse repurchase agreements would be secured by debt obligations of the U.S. Government or Agencies guaranteed by the U.S. Government, or by mortgage pass-through obligations issued by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association. Collateral posted by a counterparty to a reverse repurchase agreement (whether securities or a combination of securities and cash) would be required to have a market value equal to 102 percent or greater of the cash invested. Investments would also be permitted in money market mutual funds that have a credit rating from one or more recognized rating agencies. All permitted investments would be short-term and readily accessible for liquidity, should the need arise, minimizing market risk.

#### Notice of Filing of Amendments No. 1

In Amendments No.1, the Clearing Agencies make a technical correction to the proposed Clearing Agency Investment Policy. The originally filed Clearing Agency Investment Policy referenced a pending request for no action relief with the Commission regarding how NSCC would invest funds in its Fully-Paid-For Account. On December 1, 2016, the Division of Trading and Markets staff (“Division”) took a no-action position regarding how NSCC could invest funds in its Fully-Paid-For Account.<sup>17</sup> As such, Amendments No. 1 would amend the Clearing Agency Investment Policy to reflect that the Division took a no action position.

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<sup>17</sup> See NSCC, SEC No-Action Letter (December 1, 2016), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/2016/national-securities-clearing-corporation-120116.pdf>.

## II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>18</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the Proposed Rule Changes, as modified by Amendments No. 1, are consistent with Section 17A(b)(3)(F) of the Act and Rule 17Ad-22(d)(3),<sup>19</sup> as described below.

### A. Consistency with Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the Clearing Agency or for which it is responsible, and, in general, to protect investors and the public interest.<sup>20</sup>

As described above, the investment guidelines and governance procedures set forth in the Clearing Agency Investment Policy would adhere to a conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk to the funds in the custody of the Clearing Agencies. The Clearing Agency Investment Policy would require the segregation of funds of each Clearing Agency, including by fund type, to help ensure that the funds of one Clearing Agency would be protected from the risk of default of another Clearing Agency. Further, the Clearing

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<sup>18</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(F); 17 C.F.R. § 240.17Ad-22(d)(3).

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(F).



Agency Investment Policy would require that each Clearing Agency invest its funds in instruments with minimal credit, market, and liquidity risks. For instance, excluding the general corporate funds of the Clearing Agencies, funds could only be invested in collateralized reverse-repurchase agreements, U.S. government debt, certain money market mutual funds, or deposited at a bank, such as the Federal Reserve Bank of New York. Additionally, the Clearing Agency Investment Policy also would require that the Clearing Agencies evaluate the credit risk of investment counterparties to help mitigate exposure of the funds to an investment counterparty default. Similarly, the Clearing Fund Investment Policy would establish investment limits by counterparty, as well as investment type, which would also help limit the Clearing Agencies' exposure to any single investment counterparty and, thus, limit potential losses of investments if a counterparty would default.

Because the Clearing Fund Investment Policy would adhere to a conservative investment philosophy that places a premium on maximizing liquidity and avoiding risk, the invested funds should be readily available to promptly facilitate end-of-day settlement, including in the event of a default by a member of a Clearing Agency. Therefore, the Clearing Agency Investment Policy would help assure the safeguarding of securities and funds in the custody and control of the Clearing Agencies, which, in turn, helps promote the prompt and accurate clearance and settlement of securities transactions by the Clearing Agencies. Likewise, the safeguarding of securities and funds in the Clearing Agencies control would further the protection of investors and the public

interest by ensuring that trades are settled even in the event of a default by a member of a Clearing Agency, consistent with Section 17A(b)(3)(F) of the Act.<sup>21</sup>

B. Consistency with Rule 17Ad-22(d)(3)

Rule 17Ad-22(d)(3), promulgated under the Act, requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or delay in its access to them and to invest assets in instruments with minimal credit, market and liquidity risks.<sup>22</sup> As stated above, the Clearing Agency Investment Policy would follow a conservative investment philosophy, placing the highest priority on maximizing liquidity and avoiding risk of loss. The Clearing Agency Investment Policy would require the segregation of funds of each Clearing Agency, necessitate the use of external credit ratings in the evaluation of counterparties where non-general corporate funds are invested, and establish investment limits by counterparty as well as investment type. Further, the Clearing Agency Investment Policy would require that each Clearing Agency invest its funds in instruments with minimal credit, market, and liquidity risks. As such, the Clearing Agency Investment Policy is consistent with the requirements of Rule 17Ad-22(d)(3), promulgated under the Act.<sup>23</sup>

III. Solicitation of Comments on Amendments No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1 to File Numbers SR-DTC-2016-007, SR-FICC-2016-005,

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<sup>21</sup> Id.

<sup>22</sup> 17 CFR 240.17Ad-22(d)(3).

<sup>23</sup> Id.

and SR-NSCC-2016-003, including whether Amendments No. 1 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2016-005, SR-FICC-2016-005, or SR-NSCC-2016-003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-DTC-2016-007, SR-FICC-2016-005, or SR-NSCC-2016-003. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Changes that are filed with the Commission, and all written communications relating to the Proposed Rule Changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filings also will be available for inspection and copying at the principal office of DTCC

and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2016-007, SR-FICC-2016-005, or SR-NSCC-2016-003 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

IV. Accelerated Approval of the Proposed Rule Changes, as Modified by Amendments No. 1

The Commission, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> finds good cause to approve the Proposed Rule Changes, as modified by Amendments No. 1, prior to the thirtieth day after the date of publication of Amendments No. 1 in the Federal Register. In Amendments No.1, the Clearing Agencies make a technical correction to the Clearing Agency Investment Policy. The originally filed Clearing Agency Investment Policy referenced a pending request for no action relief with the Commission regarding how NSCC would invest funds in its Fully-Paid-For Account. On December 1, 2016, the Division took a no-action position regarding how NSCC could invest funds in its Fully-Paid-For Account.<sup>25</sup> As such, Amendments No. 1 would amend the Clearing Agency Investment Policy to reflect the Division's position.

As discussed more fully above, the Commission finds that the Proposed Rule Changes, as modified by Amendments No. 1, will establish a Clearing Agency

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<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> See NSCC, SEC No-Action Letter (December 1, 2016), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/2016/national-securities-clearing-corporation-120116.pdf>.

Investment Policy that adheres to a conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk to the funds in the custody of the Clearing Agencies, thereby promoting the prompt and accurate clearance and settlement of securities, consistent with Section 17A(b)(3)(F) of the Act, cited above. The Commission also finds, as discussed above, that via the Proposed Rule Changes, as modified by Amendments No. 1, NSCC will hold the described funds in a manner that minimizes the risk of loss or delay in access to them and will invest the funds in instruments with minimal credit, market and liquidity risks, consistent with Rule 17Ad-22(d)(3) of the Act, cited above. Additionally, the Commission finds that Amendments No. 1 only made a technical, non-substantive change to the Investment Policy as originally proposed. Accordingly, the Commission finds good cause for approving the Proposed Rule Changes, as modified by Amendments No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>26</sup>

V. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Changes, as modified by Amendments No. 1, are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>27</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that

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<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 15 U.S.C. 78q-1.

proposed rule changes SR-DTC-2016-007, SR-FICC-2016-005, and SR-NSCC-2016-003, as modified by Amendments No. 1, be, and hereby are, APPROVED on an accelerated basis.<sup>28</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>28</sup> In approving the Proposed Rule Changes, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

